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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|--------------------------|------------------------------|------------------|
| 09/931,668 | 08/16/2001 | Andrew Michael Pelletier | GEMS:0055--1/YOD 31-PN-62 | 3806 |

7590

03/23/2004

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| EXAMINER |
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BOCKELMAN, MARK

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| ART UNIT | PAPER NUMBER |
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3762

DATE MAILED: 03/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/931,668

Applicant(s)

PELLETIER ET AL.

Examiner

Mark W Bockelman

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-19, 21-32 and 34-44 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 16-19, 21-32, 34-44 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3-15-04 has been entered.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 28-32, 34-35, 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frid et al USPN 5,857,967 (alone or alternatively in view of Gat USPN 5,954,663) in further view of Bates et al. USPN 5,907,681. Frid teaches the use of a general purpose network uses a browser and HTML files (web page) of electrocardiograms such that entrance at a remote cite may be had by requesting clients using a configurable network link (URL). The files are created with the aid of an ecg recorder and may update the displayed page in realtime (see column 4 lines 26-37). Although the device is not stated as being used for a fetal ecg system, the term fetal is merely an intended use in applicant's claims and the ecg monitor of Frid is capable of being attached to any patient including that of an expecting mother. Alternatively, it would have been obvious to use or convert the Frid system for use with an expectant mother as in the Gat system which accomplishes the same task as Frid but with a dedicated computer system.

Applicant differs in providing a means for choosing between realtime mode in which data is automatically updated or historical mode wherein the data is not updated. Such a feature is common on network browsers in the form of an auto refresh selector that can be selected to update available website data or turned off such that no such updating and therefore only historical data is transmitted. The examiner refers applicant to column 1 lines 20-30 of Bates et al USPN 5,907,681. To have included the conventional browser as described by Bates or alternatively the advancement by Bates for his reasons would have been obvious to one of ordinary skill in the art since such

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variations where well known in the internet browser art at the time of applicant's invention.

3. Claims 16-19, 21-27 and 36-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frid et al USPN 5,857,967 in view of Gat USPN 5,954,663 and Bates et al. USPN 5,907,681

As noted above Frid et al uses the same system as applicant for recording and accessing ecg's. Applicant differs in his methods by recording the ecg's for expecting mothers. To have implemented the Gat sensors into the Frid et al system, or to have alternatively applied the Frid internet system to the Gat device for the specific advantages taught over Gat type systems would have been obvious. Retransmission of the updated data would be accomplished in the realtime update provided by Frid. Such real time implementations on the internet have been well known prior to applicant's effective filing data. It was also well known at the time of the invention to update the page by refreshing it and retransmitting new data that is not updated to the client in real time. Applicant differs in providing a step of choosing between historical mode or realtime transmission of data which is considered obvious in view of Bates USPN 5,907,681 for identical reasons as those provided in item 2. as stated above.

Response to Arguments

Applicant's arguments filed 3-15-04 have been fully considered but they are not persuasive. Applicant argues that the combined references do not meet all of the

limitations recited in the claims. Applicant argues, without having supporting language in the claim, that the "historical data" is different in the claim in that it should include the selection of any suitable time period. The examiner reminds applicant that limitations are not read into claims. If applicant truly wishes this limitation to a part of the claim, the claim should be amended to include it. Furthermore, applicant's disclosure is at best vague in how this is carried forth. It appears that the scrolling mechanism shown in figure 4 may have something to do it. However, applicant's own cited language supports what the examiner has proposed as his rejection, that download data, is historical and then may be updated continuously. This seems to follow applicant's figure 5 which shows the "optional mode" selection. The corresponding text accompanying figure 5 does not describe how the mode selection takes place. Thus, while applicant argues that his mode selection is part of the interface page (which again is not in the claims), there is no support in the specification. The scroll buttons in figure 4 are for scrolling, not mode selection. In fact, there is very little disclosure that supports what applicant argues to be the patentable feature of his invention.

Finally, the applicant seems to dwell on the fact that the examiner has made a 103 rejection in what applicant deems to be admission that what is relied upon as being disclosed in the Bates reference is without a doubt, missing from the other prior disclosures. This is in fact not the case. It is the opinion of the examiner that ordinary skilled artisan reader of the Frid and Gat would realize that conventional computers are employed with browsers that automatically refresh "real time" pages much like the computer on which this action is being typed. Furthermore, it is of the opinion that the

automatic refresh can be turn off on most computers. However, for the examiner to make an inherency argument, the examiner must show 100% certainty and not 99.9% certainty and therefor the examiner provides the Bates reference, which is used in a similar fashion as is well known to demonstrate that at the time of applicant's invention, it was well known to include these features.

Because at a very minimum, applicant is reading limitations into the claims that are not there the examiner does not deem the arguments to be persuasive.

Conclusion

This is a RCE of applicant's earlier Application No. 09/931668. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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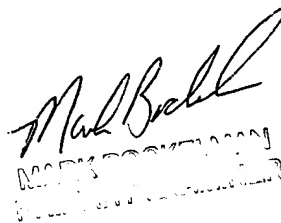
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark W Bockelman whose telephone number is (703)-308-2112. The examiner can normally be reached on Monday - Thursday 10-8:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MWB

March 20, 2004

A handwritten signature in cursive script, appearing to read "Mark Bockelman", is written over a circular official stamp. The stamp contains text that is partially obscured but appears to include "MAR 20 2004" and "U.S. PATENT AND TRADEMARK OFFICE".